IN THE HIGH COURT OF BOMBAY AT GOA
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CRIMINAL APPEAL NO. 43 OF 2003

Mr. V. V. Mohan,
presently undergoing
sentence at Central
Jail, Aguada,
Bardez, Goa. ...Appellant.

Versus

S T A T E ...Respondent.

Shri A. B. D'Sa, advocate for the appellant.

Shri S. N. Sardessai, Public Prosecutor for the State.

CORAM : A. M. KHANWILKAR &
P. V. HARDAS, JJ.

DATE : 10th December, 2003.

ORAL JUDGMENT (Per Hardas, J.)

The appellant, who is convicted by the Additional Sessions Judge, Panaji, by Judgment dated 30th April, 2002, rendered in Sessions Case No. 10 of 2002, for an offence punishable under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life and to pay a fine of Rs.5,000/- and in default to undergo R.I. for two months, has filed the present appeal assailing the conviction and sentence.

The facts in brief as are necessary for the decision of this appeal are stated as hereunder:-

On 4th November, 2001, P. W. 2, Jerome Monteiro, filed a report at Exh. 14 to P.W.11, P.S.I. Vishwesh Karpe, alleging therein that the appellant/accused had assaulted one

Madhu Ramchandra Valmiki, with a wooden hammer and had stabbed Madhu with a chisel on his abdomen. On the basis of the complaint at Exh.14, P.W.11, P.S.I.Karpe, registered an offence vide Cr.No.84/2001 under Section 302 of the Indian Penal Code. P.W.11, P.S.I. Karpe, then proceeded to the scene of the offence and saw that the deceased was lying in a pool of blood on the first floor. A chisel was also found lying on the floor at a distance of about one metre from the head of the deceased. The chisel appeared to be stained with blood. A wooden hammer was also lying near the dead body. The scene of the offence panchanama at Exh.11 was drawn in the presence of P.W.1, Joao Manuel Pires and the chisel and the hammer (M.Os.1 and 2) came to be attached. The service of the dog quad was pressed into service and the sniffer dogs were given the smell of the bed-sheet lying on the mat. The dogs ran up to the main stairway near the Goa Medical College Hospital and lost further track. An inquest panchanama at Exh.16 was drawn in the presence of P.W.3, Anand Gawas. Vide letter at Exh.18 colly., the Police Surgeon was requested to conduct the autopsy. The post-mortem was conducted by P.W.4, Dr.E. J. Rodrigues, who found the following injuries:-

1. Eliptical shaped incised wound of 3.5 x 1 cm. x Abdominal cavity deep, obliquely placed over (RT) side upper abdomen. The lower inner end is 5 cms. above and 2 cms. to right of umbilicus. the injury had made a cut from skin subcutaneous tissues and abdominal muscles to a thickness of 1.5 cms. with corresponding cut in the mentum and had finally made a cut of 1 cm. in the inferior vena cava over its anterior aspect.

2. Contused lacerated wound of 4 x 0.5 cms. x skull bone deep, placed ante-posteriorly in mid-posterior perital scalp region with extravassation of blood underneath in an area of 6 x 3 cms. on the right perital region.

3. Vertical lacerated wound of 4 cms. separating left ear pinna upto lobule hanging from upper 1 cm. of ear pinna.

4. Total amputation of left middle finger just above distal interphalangeal joint.

According to P.W.4, Dr. E. J. Rodrigues, injury no.1 was caused by sharp and penetrating weapon; injuries no.2 and 3 were caused by hard and blunt object and injury no.4 was caused by sharp penetrating cutting weapon. On internal examination, P.W.4, Dr. E. J. Rodrigues, noticed an oval depressed fracture of 6 x 5 cms. in respect of injury no.1. He opined that death was due to haemorrhage shock vide injury no.1 associated with head injury. According to him, injury no.1 was necessarily fatal. The post-mortem report is at Exh.19. The viscera was preserved and forwarded vide letter at Exh.20 colly. On 4th November, 2001, at about 11 a.m., the accused was arrested and was examined by P.W. 4, Dr. E. J. Rodrigues. No injuries were noticed on the person of the accused. However, his scalp hair and nail clippings were preserved and forwarded alongwith letter at Exh.21 colly. The certificate of examination of the accused is at Exh.23 colly. The clothes which were on the person of the accused came to be seized vide arrest panchanama at Exh.38. The Assistant Engineer of P.W.D., vide letter at Exh.42, was requested to depute the Surveyor/Draftsman to draw the sketch of the scene of the offence. P.W.7, Ravindra

Hegde, drew the sketch at Exh.30.

2. Further investigation was taken up by P.W.12, Police Inspector Dinraj Govekar, who requested the Special Judicial Magistrate, P.W.10, to record the statement under Section 164 of the Cr.P.C. The muddemal was forwarded to the Central Forensic Laboratory at Hyderabad. After the receipt of the report of the Central Forensic Laboratory, chargesheet against the appellant came to be filed. On committal of the case to the Court of Sessions, charge vide Exh.8 was framed by the Sessions Judge, Panaji. The appellant/accused denied his guilt and claimed to be tried.

3. The prosecution, in support of its case, examined 12 witnesses. The defence of the appellant/accused, as is evident from his statement under Section 313 of the Cr.P.C., was of denial. The learned trial Court accepting the prosecution case, convicted and sentenced the appellant as aforestated. Hence the appeal.

4. P.W.2, Jerome Monteiro, the complainant, states that the accused was residing in a house situated at Bambolim, belonging to the in-laws of Jerome. The deceased Madhu was also residing in the same house alongwith the accused. The accused as well as the deceased Madhu were carpenters by profession and the accused was employed by the deceased Madhu. The deceased Madhu had eight such workers and he was irregular

in the payment of their salary. On 3rd November, 2001, at about 10.45 p.m. a neighbour P.W.6, Cedric Menezes Gama, told P.W.2, Jerome, that there was some problem in the house occupied by the deceased and the accused. P. W.2, Jerome, alongwith P.W.6, Cedric, went to the house occupied by the accused and noticed the deceased Madhu lying in a pool of blood. Accordingly, P.W.2, Jerome, informed the Police and his complaint at Exh. 14 came to be recorded. P.W.2, Jerome, was cross-examined by the Public Prosecutor. According to him, his complaint was read over to him and the complaint was as per his narration. Certain portions from the complaint were confronted and the witness denied having stated the same to the Police. The contradictions related to the deceased Madhu not paying the salary on time and on account of that there used to be frequent quarrels and fights between the accused and the deceased. He denied the suggestion that he had seen the accused fighting and quarrelling with the deceased over non-payment of salary. He has also denied the suggestion that P.W.6, Cedric, had informed P.W.2 Jerome, that P.W.6, Cedric had seen the accused throwing wooden frames out of the house. In the cross-examination on behalf of the accused, P.W. 2, Jerome, has admitted that the accused used to sometimes sleep on a hillock. He has denied the suggestion that the accused never slept in the house of the deceased Madhu.

5. P.W.6, Cedric, states that he was working as an

L.D.C. in the office of the Directorate of Accounts at Margao. He further states that on 3rd November, 2001, which was a Saturday, at about 10.45 p.m. he heard some noise coming from the direction of the house occupied by deceased Madhu. The house of deceased Madhu was situated at a distance of about 20 mts. from the house of Basilia Monteiro, in whose house P.W.6, Cedric, was staying. On hearing the noise he came out in the gallery and saw the accused standing in the gallery of Madhu's house and throwing incomplete window frames from the house. Thereafter, he saw the accused walking towards Goa Medical College Complex, Bambolim. Suspecting that something was wrong, he went to the house of Madhu and saw Madhu lying in a pool of blood. He came and informed P.W.2, Jerome, about the incident. In cross-examination on behalf of the accused, he has admitted that his statement was recorded by the Police on 4th November, 2001. He has admitted not to have stated in his statement that he had seen the chisel near the body of Madhu. He has denied the suggestion that on the relevant day he had gone to sleep at 9.30 p.m. He has admitted to have visited the house of the deceased Madhu prior to the incident. He has also admitted that the deceased Madhu and the accused were working together and he had seen the accused in the house for the first time, five months prior to the incident. He has also admitted to have seen other helpers and carpenters working for the deceased Madhu in the house. According to him, he had never seen deceased Madhu quarrelling with his workers. He has feigned ignorance to the

suggestion that the accused used to leave his house at 8.30 p.m. or 9 p.m. and used to sleep on a hillock. He has admitted that he followed the accused, but since it was dark he had returned and informed P.W.2, Jerome about the incident. He has admitted not to have questioned the accused as to why he was throwing the window frames.

6. The prosecution has also examined P.W.8, Andrew Pegado, who had taken photographs of the scene of the offence. The prosecution has also examined P.W.9, Prakash Metri, in whose presence the accused was arrested and his clothes were seized vide panchanama at Exh.38.

7. From the evidence of the prosecution, it emerges that the accused was in the house and was seen throwing partly completed wooden frames. The accused was also seen leaving the house of deceased Madhu and within a short time thereafter, P.W.2, Jerome and P.W.6, Cedric, found the deceased lying in a pool of blood. There is some vague evidence in respect of the deceased Madhu being a bad paymaster and there being frequent quarrels in between the deceased and the accused in respect of non-payment of the salary.

8. Shri A. B. D'Sa, learned counsel appearing on behalf of the appellant, has urged before us that the evidence in respect of the accused throwing the wooden frames out of

the house and the accused leaving the house of the deceased Madhu is completely discrepant and cannot be relied upon. He has, therefore, submitted that if this piece of evidence is discarded, there is no evidence worth the name to sustain the conviction. He has further submitted that since the prosecution case rests on circumstantial evidence, the prosecution has to prove each and every circumstance and the circumstances so proved should form a complete chain, which should exclude every hypothesis of the innocence of the accused and should unerringly point to the guilt of the accused.

9. Shri S.N. Sardessai, learned Public Prosecutor, appearing on behalf of the State, has submitted that the evidence of P.W.2, Jerome, and P.W. 6, Cedric, unerringly points to the presence of the accused at the scene of the offence. The accused was seen leaving the house of the deceased and immediately thereafter the dead body of the deceased was discovered.

10. P.W.2, Jerome, did not support the prosecution and was cross-examined by the Prosecutor. He has stated that the deceased Madhu was not paying salary regularly to the accused. He has also stated that he had not seen any quarrel in between the deceased and the accused on account of non-payment of salary. P.W.2, Jerome, has corroborated what P.W.6, Cedric has stated. The prosecution has also examined

P.W.5, Rajendra Chawan, who was also employed by the deceased Madhu. He has stated that Madhu was not regular in paying the salary. He has further stated that the deceased Madhu and the accused were residing in one house. On 3rd November, 2001, he had worked in the workshop of the deceased Madhu till 1.30 p.m. and at about 6 p.m. he was sitting by the side of the road leading to Bambolim, when he saw the accused and the deceased Madhu proceeding towards Goa Medical College. The deceased Madhu told him that he was going to the hospital and told P.W.5, Rajendra to keep an eye on the timber which was outside his house. Accordingly, P.W.5, Rajendra, went to the house of the deceased Madhu and waited till their return. Madhu and the accused returned back at about 7 p.m. and P.W.5, Rajendra, went inside the house of Madhu to watch a movie on television. Thereafter, he started watching a cricket match. Thereafter a fight started between the deceased and the accused and the deceased gave two or three slaps on the back of the accused. Thereafter P.W.5, Rajendra, left the house of the deceased. He, too, was declared hostile and was cross-examined and has admitted that Rs.20/- was given by the deceased to the accused for bringing liquor. He has admitted that the deceased had abused the accused while they were having their dinner. He has denied the suggestion that he had seen the accused assaulting the deceased on his head with a wooden hammer. He has admitted that he was taken in the custody by the police and was released after four days of the incident. Thus, P.W.5, Rajendra, though an eye-witness to

the incident, has suppressed having seen the incident.

11. The evidence of P.W.5, Rajendra, indicates that there was some quarrel between the accused and the deceased. The evidence of P.W.6, Cedric, indicates that he has seen the accused throwing a wooden frame out of the house and thereafter leaving the house of deceased Madhu. Immediately thereafter, the deceased was found lying in a pool of blood. These circumstances, according to us, have been established by the prosecution. The only inference from the above circumstances is that the accused had killed deceased Madhu and thereafter had left the house of deceased Madhu. The intervening time between seeing the accused leaving the house of the deceased and finding the dead body of the deceased is so short, that it excludes the possibility of someone else committing the crime. Therefore, according to us, on the basis of the proved circumstances, the prosecution has proved beyond reasonable doubt, the commission of the offence by the accused. The chain of circumstantial evidence is thus complete and the proved circumstances unerringly point to the guilt of the accused.

12. We, therefore, see no merit in the present Appeal and the present Appeal is accordingly dismissed. Since

the appellant is in jail, a copy of this Judgment be sent to the appellant.

A. M. KHANWILKAR, J.

P. V.HARDAS, J.

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